

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

OFFICE OF MENTAL RETARDATION AND
DEVELOPMENTAL DISABILITIES on Behalf
of Kellye A. Duncan,

Plaintiff,

vs

6:04-CV-386

JoANNE B. BARNHART, COMMISSIONER,
OF SOCIAL SECURITY ADMINISTRATION,

Defendant.

APPEARANCES:

HON. ELIOT SPITZER
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State of New York
Attorney for Defendants
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SOCIAL SECURITY ADMINISTRATION
Office of Regional General Counsel
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DAVID N. HURD
United States District Judge

OF COUNSEL:

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Asst. Attorney General

WILLIAM H. PEASE, ESQ.
Assistant U.S. Attorney

ARTHUR SWERDLOFF, ESQ.

DECISION and ORDER

Plaintiff, Office of Mental Retardation and Developmental Disabilities on Behalf of Kellye A. Duncan, brought this action seeking judicial review pursuant to 42 U.S.C. § 405(g) of the Social Security Act. By Report and Recommendation dated June 16, 2006, the Honorable David E. Peebles, United States Magistrate Judge, recommended that the defendant's motion for judgment on the pleadings be granted, the Commissioner's determination be affirmed, and plaintiff's complaint in the action be dismissed in all respects. The parties have filed timely objections to the Report-Recommendation.

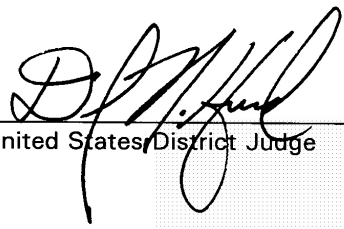
Based upon a de novo determination of the portions of the report and recommendations to which the parties have objected, the Report-Recommendation is accepted and adopted in whole. See 28 U.S.C. 636(b)(1). Accordingly, it is

ORDERED that

1. The defendant's motion for judgment on the pleadings is GRANTED;
2. The Commissioner's determination is AFFIRMED; and
3. Plaintiff's complaint is DISMISSED in all respects.

The Clerk is directed to enter judgment accordingly.

IT IS SO ORDERED.


United States District Judge

Dated: November 20, 2006
Utica, New York.